

AMENDMENTS TO THE DRAWINGS

Please substitute the attached two (2) Replacement Sheets for Figures 3-6. The changes relative to the original figures are discussed below.

REMARKS

Applicant has made the above amendments and offers the below remarks in support of the patentability of the pending claims in this application.

Status of the Claims

Claims 1-4, 6, 7, 9-11, 16-19, 21, 22, 24-26, and 31-36 are currently pending in this application. Claims 4, 5, 8, 12-15, 19, 20, 23, 27-30 stand withdrawn from consideration as being directed to non-elected subject matter. Claims 1, 7, 16, and 31 are presently amended.

Applicant's Summary of the Interview

Applicant greatly appreciates the Office's time and participation in the telephonic interview with Applicant's representative on March 12, 2008. Pursuant to MPEP § 713.04, Applicant provides the following substance of that interview.

Applicant and the Office discussed U.S. Pat. No. 5,827,191 to Rosenfeld ("*Rosenfeld*"). Applicant explained that *Rosenfeld* is directed to a different subject matter from the pending claims and fails to teach or suggest a number of the recitations contained therein. In particular, Applicant asserted that *Rosenfeld* fails to teach or suggest at least separate feeding and indicator pathways as claimed. Instead, *Rosenfeld* teaches three channels that are each indistinguishable, interchangeable, and identical to each other and serve exactly the same purpose. In addition, Applicant explained that *Rosenfeld* fails to teach or suggest a product or method "whereby the amount of fluid drawn into the indicator pathway is indicative of the amount of fluid drawn into the feeding pathway," as recited *inter alia* in the pending claims.

Applicant also discussed a proposed amendment to recite that the indicator pathway be "separate from the feeding pathway." Applicant explained that this amendment should further expressly distinguish the methods and products of the pending claims over those disclosed in *Rosenfeld*, which teaches only the three identical channels serving the same purpose. The Office appeared to indicate agreement with the amendment and those remarks.

Again, Applicant appreciates the Office's telephonic interview with its representative. If the undersigned misunderstood any part of the interview as reflected

in this statement of its substance, Applicant respectfully requests that the Office please contact the undersigned to discuss an appropriate resolution.

Restriction Requirement

The Office made final the Restriction Requirement dated May 4, 2007, which was traversed by Applicant in the Response to Restriction Requirement filed September 4, 2007. In that Response, Applicant amended the application by deleting Figures 7-16, and elected with traverse Species A (claims 1-4, 6, 7, 9-11, 16-19, 21, 22, 24-26, and 31-36 and Figures 1-6) without prejudice to the scope of the pending subject matter. Additionally, in the pending Office Action dated September 24, 2007, the Office has withdrawn claims 4 and 19 for reciting "a pressure delivery pathway" allegedly not present in the elected species. See Office Action at 2. Applicant does not necessarily agree with the Office regarding claims 4 and 19 and continues to reserve the right to present the subject matter disclosed by all non-elected species in this or a later-filed divisional application. However, in order to expedite the prosecution of this application, Applicant has withdrawn claims 4 and 19 herein. However, Applicant understands that, upon the allowance of a generic claim, Applicant will be entitled to the consideration of all claims to additional species that dependant from or otherwise require all the limitations of the allowable generic claim as provided by 37 C.F.R. § 1.141.

Objection to the Drawings

The Office objected to the drawings under 37 C.F.R. § 1.83(a), stating that "[t]he drawings must show every feature of the invention specified by the claims." See Office Action at 3. Specifically, the Office objected to the lack of the check-valve (recited in dependant claims 11 and 26) in the drawings. Without necessarily agreeing with the Office, and without prejudice to the scope of pending subject matter, Applicant has amended Figures 3-6 to incorporate one embodiment of the location for the check-valve recited in dependant claims 11 and 26. Support for such an amendment may be found in at least paragraph [041] of the original specification. As such, Applicant respectfully requests that the objection be withdrawn.

Amendments to the Claims

Applicant has amended independent claims 1 and 16 to recite "providing an indicator pathway separate from the feeding pathway," and has amended independent claim 31 to recite "providing the suction to at least a first pathway and a second pathway separate from the first pathway," which is supported by at least figures 1-6 and the original specification. Applicant has also amended claim 7 merely to correct an obvious typographical error. In light of at least that support in the original specification and the nature of the amendments, Applicant submits that the amendments do not add any prohibited new matter and that the skilled artisan would readily understand Applicant to have been in possession of the claimed subject matter at the time this application was filed. Therefore, Applicant requests that the Office enter the amendments without objection or rejection.

Amendments to the Specification

In light of the amendments to Figures 3-6, Applicant has amended paragraph [041] of the specification to reflect features of the amended drawings. Additionally, Applicant has made amendments to the specification at paragraphs [016], [028], [032], [045], [050], and [079] merely to correct obvious typographical errors. None of the amendments add new matter and Applicant respectfully requests that the amendments be entered accordingly without objection or rejection.

Rejection under 35 U.S.C. § 102(b)

The Office rejected claims 1, 6, 7, 9, 16, 21, 22, 24, 31-34, and 36 under 35 U.S.C. § 102(b) as allegedly anticipated by U.S. Patent No. 5,827,191 ("*Rosenfeld*"). See Office Action at 4-9. For at least the following reasons, Applicant respectfully traverses those rejections.

In order to show anticipation, the Office must provide a single reference that discloses, either expressly or inherently, each and every element of the pending claims. See MPEP § 2131. Furthermore, "[t]he identical invention must be shown in as complete detail as is contained in the . . . claim[s]." See *id.* (quoting *Richardson v. Suzuki Motor Co.*, 868 F.2d 1126, 1236 (Fed. Cir. 1989)). Applicant asserts that this long-standing test for anticipation under 35 U.S.C. § 102 has not been met here.

Rosenfeld fails to teach or suggest at least both “a feeding pathway” and “an indicator pathway” as recited in pending independent claims 1 and 16, or both a “first pathway” and a “second pathway” as recited in independent claim 31. The Office asserts that the three passages of *Rosenfeld* (collectively identified as “13” in Figures 3-5) may comprise both the feeding pathway and indicator pathway or the first pathway and second pathway of the pending claims. In particular, the Office asserts that any one of those three passages may constitute the first or feeding pathway, while any other of the three pathways may constitute the second or indicator pathway. See Office Action at 4-5 and 8. The Office has, thus, expressly recognized the indistinguishable and interchangeable nature of the three *Rosenfeld* passages. In fact, the three passages are disclosed as being identical and serving the exact same purpose. See *Rosenfeld* at col. 3, lines 31-40. The passages are not “separate,” as are the recited feeding and indicator pathways or first and second pathways of the amended claims.

In addition, Applicant asserts that *Rosenfeld* fails to teach or suggest the recitation “wherein the amount of fluid drawn into the indicator pathway is indicative of the amount of fluid drawn into the feeding pathway,” as recited in pending independent claims 1 and 16. In particular, none of the three pathways of *Rosenfeld* serve the purpose of indicating the amount of fluid drawn into any of the other pathways. Instead, in *Rosenfeld*, the amount of fluid drawn into all three passages is used to indicate the amount of fluid collectively drawn into all three passages, not any single one. See *Rosenfeld* at col. 3, lines 42-46.

Rosenfeld does not teach pathways that are “separate” as recited in the presently amended claims. Instead, as admitted by the Office, the three channels of *Rosenfeld* are indistinguishable, interchangeable, and identical. As such, Applicant asserts that *Rosenfeld* fails to anticipate the claims as amended herein and respectfully requests that the rejection under 35 U.S.C. § 102 be withdrawn.

Rejection under 35 U.S.C. § 103(a)

A. Claims 2, 3, 17, and 18 Are Not Obvious over *Rosenfeld*

The Office rejected dependent claims 2, 3, 17, and 18 under 35 U.S.C. § 103(a) as allegedly obvious over *Rosenfeld*. The Office asserts that “it would have been

obvious to one of ordinary skill in the art at the time of the invention to have arranged the cross section areas and lengths of the pathways so that the first pathway is smaller in cross-sectional area and longer in length, since such a modification would have involved a mere change in the size of a component." See Office Action at 9-11. For at least the following reasons, Applicant respectfully traverses this rejection.

Questions regarding obviousness under 35 U.S.C. § 103(a) are resolved on the basis of underlying factual determinations, including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18, 148 U.S.P.Q. 459, 467 (1966); see also *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1734, 82 U.S.P.Q. 2d 1385, 1391 (2007) ("While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls."). In making an obviousness rejection, the Office must clearly explain the basis for the rejection, including "why the difference(s) between the prior art and the present application would have been obvious to one of ordinary skill in the art." MPEP § 2141(II).

While Applicant does not necessarily agree with the Office's characterization of the obviousness of changing the cross section areas and lengths of the pathways of *Rosenfeld*, Applicant submits that, in any event, *Rosenfeld* fails to render obvious the pending claims as amended herein. In particular, *Rosenfeld* fails to render obvious the recitation of amended independent claims 1 and 16 of "providing an indicator pathway separate from the feeding pathway" and the recitation of amended independent claim 31 of "providing the suction to at least a first pathway and a second pathway separate from the first pathway."

As noted above, the three channels of *Rosenfeld* are indistinguishable, interchangeable, and identical. They each serve the same function. See *Rosenfeld* at col. 3, lines 31-46. If one of the passages of *Rosenfeld* was modified to be separate from the other two passages, as recited in the pending claims, its function in the apparatus and method of *Rosenfeld* would be destroyed. Such a modification is clearly insufficient to support a proper *prima facie* case of obviousness and reveals that the skilled artisan would not have been motivated or found it desirable to have made the

modification suggested by the Office in an attempt to achieve the subject matter of the pending claims. See MPEP 2143.01(V) ("If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification."). As such, Applicant respectfully requests that the rejection be withdrawn.

B. Claims 10, 11, 25, and 26 Are Not Obvious over Rosenfeld in View of Buckley

The Office rejected dependent claims 10, 11, 25, and 26 under 35 U.S.C. § 103(a) as allegedly obvious over *Rosenfeld* in view of U.S. Patent No. 6,109,100 to Buckley et al. ("*Buckley*"). The Office asserts that, while *Rosenfeld* fails to teach a fluid source being a bottle or the presence of a check valve to prevent backflow of fluid, those features would be rendered obvious by the teachings of *Buckley*. See Office Action at 10. Applicant respectfully traverses the rejection .

Whatever *Buckley* may teach regarding a fluid source being a bottle or the presence of a check valve, it fails to overcome the deficiencies of *Rosenfeld* detailed above. In particular, like *Rosenfeld*, *Buckley* fails to teach or suggest at least "providing an indicator pathway separate from the feeding pathway." As such, the combination of the two references cannot render obvious the pending claims and Applicant respectfully requests that the rejection be withdrawn.

C. Claim 35 is Not Unpatentable over Rosenfeld in View of Bommarito

The Office rejected claim 35 under 35 U.S.C. § 103(a) as allegedly obvious over *Rosenfeld* in view of U.S. Patent No. 6,741,523 ("*Bommarito*"). The Office asserts that, while *Rosenfeld* fails to teach a color code in the fluid pathway code in the fluid pathway to indicate presence of fluid, that feature would be rendered obvious by the teachings of *Bommarito*. See Office Action at 10-11. Applicant respectfully traverses the rejection.

Whatever *Bommarito* may teach regarding a color code in the fluid pathway code in the fluid pathway to indicate presence of fluid, it fails to overcome the deficiencies of *Rosenfeld* detailed above. In particular, like *Rosenfeld*, *Bommarito* fails to teach or suggest at least "providing the suction to at least a first pathway and a second pathway separate from the first pathway." As such, the combination of the two references cannot

render obvious the pending claims and Applicant respectfully requests that the rejection be withdrawn.

Conclusion

For at least the reasons detailed above, the references of record fail to either anticipate or render obvious the pending claims. In particular, none of the references of record, whether taken alone or in any combination, teach or suggest at least "providing an indicator pathway separate from the feeding pathway," as recited by pending independent claims 1 and 16, or "providing the suction to at least a first pathway and a second pathway separate from the first pathway," as recited by pending independent claim 31. Applicant respectfully requests entry of all amendments made herein, withdrawal of the rejections, and allowance of the claims as amended.

If the Office has any questions regarding this Response or the application in general, Applicant respectfully requests that the Office contact the undersigned representative at the information listed below.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: March 24, 2008

By: /Jeffrey A. Freeman/
Jeffrey A. Freeman
Reg. No. 58,275
Telephone: 404-653-6430
Facsimile: 404-653-6444